



Employee Plans

Internal Revenue Service

Employee Plans Rulings & Agreements Overview

Central Mountain Employee Benefits Conference

September 11, 2003

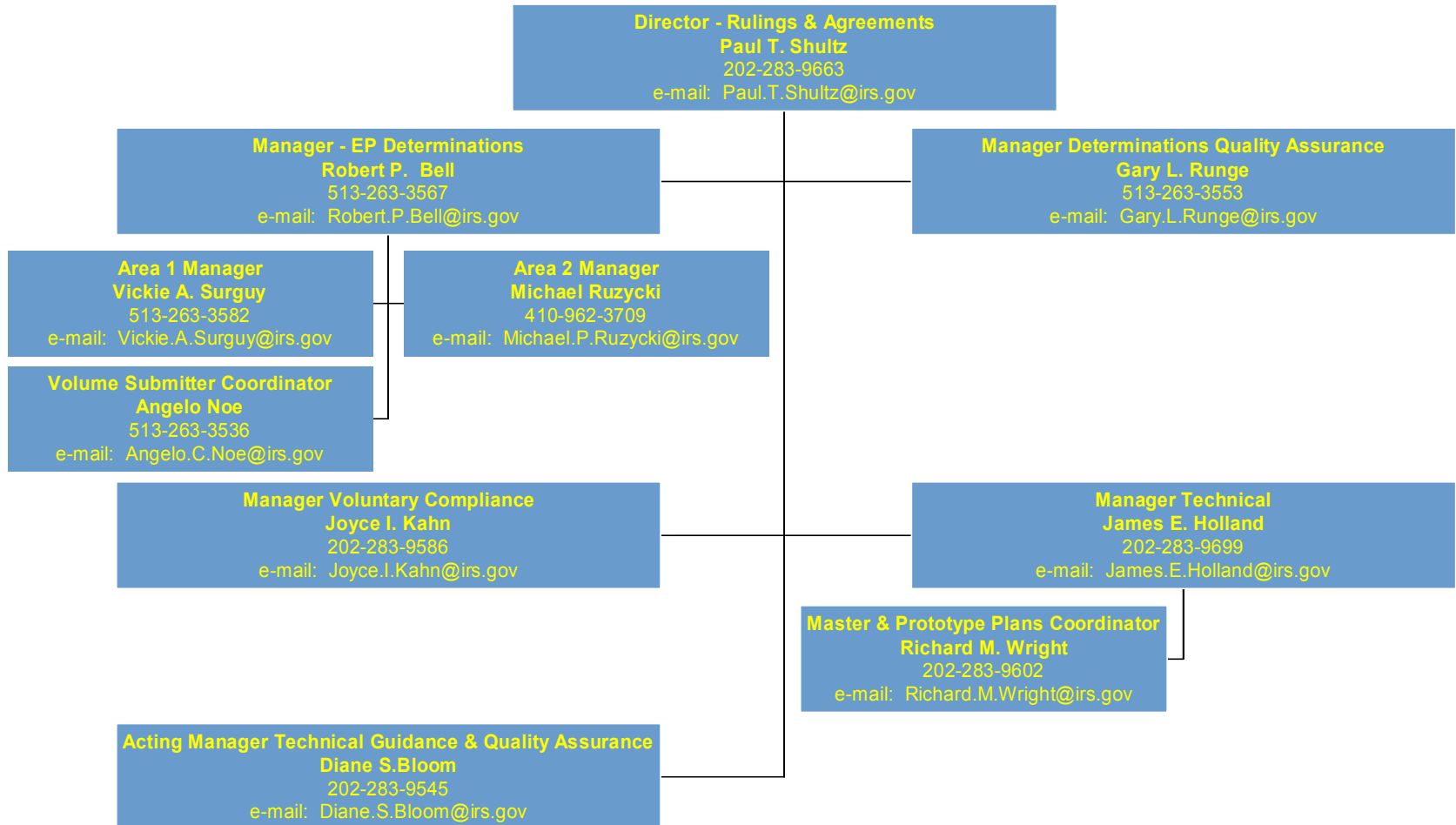


Rulings & Agreements

- Major focus: Determination letter applications for GUST
- Streamlined current determination process
- Plan for future determination process, including EGTRRA submissions
- Ramp up Voluntary Compliance unit
- Address abusive tax shelters using plans
- Administer minimum funding rules for DBs



EP – Rulings and Agreements





Rulings & Agreements --EP

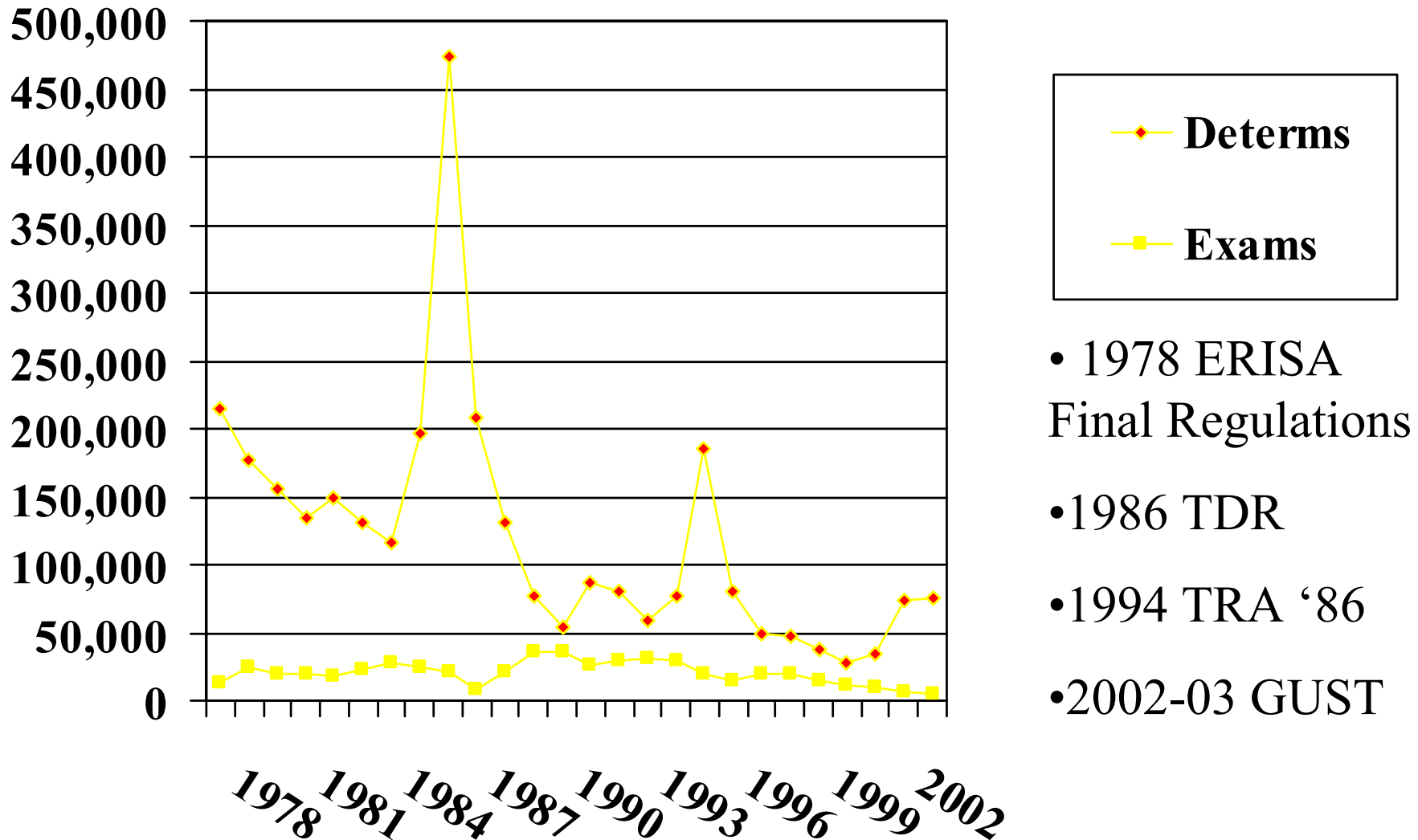
Talking Points

- 9/30 RAP -- Adopters of M&P & VS Plans 1/31/04 to file; \$250 compliance fee if late but before 1/31/04
- Aug. 2003 EP News
- Retirement Plan Correction CD-ROM now
- Ret Plan Correction new publication
- USERRA FAQs on website
- Don't file fringe benefit info with 5500!





Determinations and Examinations “at a Glance”





Receipts through September 30, 2002 (End FY2002)

Forms 5300/5303	40,000
-----------------	--------

Forms 5307/6406	25,000
-----------------	--------

Form 5310	8,000
-----------	-------

Total as of September 30:	73,000
---------------------------	--------

Total as of Sept. 6, 2003:	61,900 mostly 5307's
----------------------------	----------------------



Receipts through Sept. 6, 2004 (FY2003)

Forms 5300/5303	8,200/8,600
Forms 5307/6406	47,800/50,100
Form 5310	5,500/5,900

Total as of Sept. 6, 2003: 61,900

64,000 as of 9/30

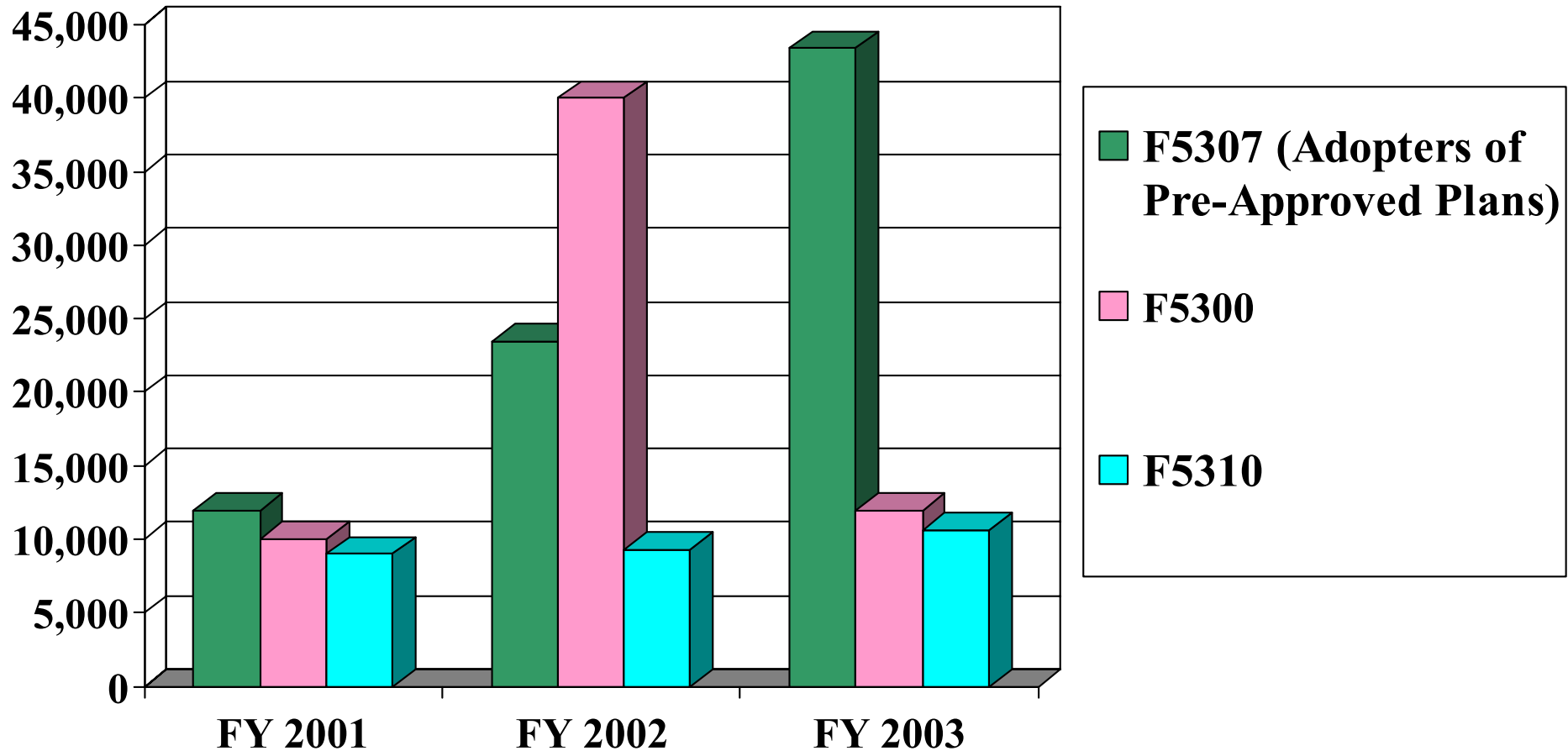


Rulings & Agreements -- Determination Letter Program

- GUST RAP -- Fourth since ERISA
 - Total Applications Expected over FYs 2002 & 2003
 - Expected 275K (Normal year 30K)
 - Now 150K
 - IDPs (on 5300)
 - Expected 100K
 - Now 50K
 - So far 48K
 - Pre-approved Plans
 - Expected 175K
 - Now 75K
 - So far 73K



“GUST” Projected Receipts





Rulings & Agreements -- Determination Letter Program

➤ Why fewer applications?

– IDPs:

- Migration to pre-approved plans

– Pre-approved plans:

- Optional filing for word for word adopters





Rulings & Agreements -- Determination Letter Program

- What EP has done to ease the job of filing applications?
 - Extensions of Remedial Amendment Periods
 - Filing for adopters of identical pre-approved plans optional
 - Nondiscrimination testing optional
 - Soft guidance (in newsletter and on website)
 - Qs & As on website
 - Screening process
 - Guidance on late filers/non-amenders
 - New forms



Rulings & Agreements -- Determination Letter Program

- Extension of Remedial Amendment Period for Pre-Approved Plans
 - RAP is later of 9/30/03 or end of 12-month period from last letter received by sponsor of plan
 - RAP *for filing only* extended to 1/31/04; still must amend or adopt by 9/30 (or 12-month rule date)
 - If miss adoption deadline, may file by 1/31/04 and pay \$250 compliance fee, and RAP extended to 91 days after receipt of letter
 - Extension applies for DC 401(a)(9) required amendments as well
 - If miss 1/31/04 deadline, must use EPCRS



Rulings & Agreements -- Determination Letter Program

- What's coming up from here?
 - Combination of M&P and VS programs?
 - Non-EGTRRA substantive amendments get EGTRRA RAP?
 - Pre-approved plan effective date changes hurt identical adopter status?
 - Model plan documents?
 - Operating manuals? SEP/SIMPLE; 403(b); 401(k)



IRS Pre-Approved Plans (Listed at www.irs.gov/ep)

Master & Prototype Specimens

- 200 sponsors submitted plans by 12/31/00 for GUST
- 1,000 plans total
- Reviewed in Washington D. C.
- Projected adopting employers seeking a determination letter – 35,000
- Number of adopting employers: More than one half million (primarily standardized plans)

Volume Submitter Plans

- 350 sponsors submitted plans by 12/31/00 for GUST
- 1,000 plans total
- Reviewed in Cincinnati and the areas
- Projected adopting employers seeking a determination letter – 40,000 (v. 140,000 orig.)



Staffing for FY 2001 -- 2003

FY 2001

- 150 Agents Total
 - 50 Agents in Cincinnati
 - (35 doing technical screening)
 - 100 Agents working determinations in their respective geographic locations

FY 2002 & 2003

- 290 Agents Total
 - 60 Agents in Cincinnati
 - (35 doing technical screening)
 - 230 Agents working determinations in their respective geographic locations
 - (75 doing technical screening)



Staffing for FY 2004

- 155 Agents Total -- All part of Determinations
 - 60 Agents in Cincinnati
 - (some doing technical screening)
 - 95 Agents working determinations in their respective geographic locations
 - (some doing technical screening)





Rulings & Agreements -- Determination Letter Program

- Why not file and move cases electronically?
 - Major systems redesign
 - Releases over next few years
 - Start with 5307 in 2003
 - Capture data, maintain electronic file of plan and application that would be available for assignment, review and status updates
 - Eventually, self-service checking on status and filing of application



Future of the Determination Letter Program

- Is there a better way to:
 - Simplify the cumbersome process?
 - Utilize resources available?
 - Reduce the amount of time spent by all parties?





“White Paper”

➤ Compendium of Brain-Storming Ideas (Ann. 2001-83)

- Current process (complex)
- Possible alternatives
- Implementation 5-10 years
- Comments were due by 7/01/02
- Summary of comments to be published; revised White Paper



➤ Public dialogue (your input) is crucial



“White Paper” Options

- Maintain Status Quo
- Eliminate DLs (all plans) – provide model plans for employers who want reliance
- Eliminate DLs for Individually Designed Plans –continue letters for sponsors of pre-approved plans (M&Ps, VS)





“White Paper” Options (continued)

- Third-party Certification System
- Self-certification System
- Annual Registration (Schedule to 5500?)
- Issue DL Only at Initial Adoption and Termination
 - Alt: Annual Registration in between





“White Paper” Options (continued)

- Stagger Expiration of the 401(b) RAP
 - Alt: Stagger the RAP But Require Immediate Amendments for Law Changes
- Immediate Amendment for Law Changes & Again for Guidance - Required Changes
 - Alt: Immediate Amendment for Law Changes and Cyclical Amendments for Guidance-Required Changes

Note: Consider mixing and matching various options.





New “White Paper” Options

- Status Quo?
 - Electronic Administration
 - Identical Adopters Automatic Reliance
- Staggered Expiration of RAPs
- Third-party Certification System
- New Feature: Annual Amendments for All





Staggered RAP Option -- What If . . . ?

- 5-Year RAP Cycle
- Based on Employer TIN
- Implement with EGTRRA RAP
- Disqualifying Provisions: Law, Other Changes





Staggered RAP Option -- What If . . .? – Special Situations

- Multiemployer plans, etc.
- Spin-offs, mergers
- Change in plan sponsorship
- Pre-approved plans: M&P and Volume Submitter plans/Options





Staggered RAP Option -- What If . . .? – Determination Letters

- Identical adopter rule unchanged
- Individually designed plans: “Scope” of DL includes all qualification changes (design as well as guidance & legis.) within 5-year RAP cycle
- Pre-approved plans: Scope of DL linked to scope of opinion/advisory letter
- Reliance until end of next 5-year RAP cycle
 - Operational compliance with intervening changes likely would be required
- Letters would state “Expiration Date”





New Feature – Annual Plan Updates

- Service would publish by end of year annual list of changes in qualification rules for following year, e.g., by Nov. 15
- Publish sample amendments, if appropriate
- “Annual” plan amendment requirement
- Special rules for pre-approved plans
- Linkage with staggered RAP option



Partner With Us

- How can we improve on the current program?
- Help us identify issues needing greatest guidance/publicity
- Dialogue on White Paper – “What is your favorite option?”



Contact Information

- Paul Shultz
202-283-9663
Paul.T.Shultz@irs.gov
- Robert Bell
513-263-3567
Robert.P.Bell@irs.gov
- Gary Runge
513-263-3553
Gary.L.Runge@irs.gov

E-mail is the preferred method of contact.

Technical Questions? Call our
Customer Account Services on
1-877-829-5500; phone preferred

EP Guidance & General Information is
available at www.irs.gov/ep





Recent Guidance and Current Projects

➤ Recent Guidance

– Cash Balance Plans

- Age discrimination proposed regulations
 - Traditional defined benefit plans
 - New cash balance plans
 - Converted cash balance plans
 - Pension equity plans
 - Benefits & contributions nondiscrimination portion withdrawn
- Interest rates proposed regulations? -- Revision of Notice 96-8 theory
- Accrual rule problem (133 1/3% rule)
- Converted plans DL applications -- Ann. 2003-1





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Proposed 417(a)(3) Relative Value Regulations
 - Result of Congressional interest
 - Require comparisons of lump sums and annuities
 - Intended to assure greater level of informed participation
 - Expect to issue final regs soon -- E.D. will be pushed back from 1/1/04.





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– IRAs and Deemed IRAs

- IRA rollover exception -- Rev. Proc. 2003-16
 - Extensions at discretion of IRS
 - Automatic where financial institution error
 - Development of internal guidelines under way
- Deemed IRAs under 408(q) --
 - Rev. Proc. 2003-13
 - Proposed regulations 1.408(q)-1; final 3rd quarter GY
 - Little use anticipated
 - Some interest among government plans





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Shut-down benefits -- Notice 2003-10
 - Historical position of IRS in GCM 39869
 - Contrary views of some courts (*e.g.*, Bellas case)
 - PBGC interests
 - Review of historical position
 - Potential major financial impact; benefits not funded
 - Any change to be prospective with transition period





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Final 72(p) Plan Loan Regulations
 - Eliminated 2-loan-per-year limit
 - Permit use of credit cards with plans
 - Modified rules on refinancing loans





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- 204(h)/4980F Regulations (Final 4/1/03)
 - 45 day – General rule
 - Exceptions:
 - 15 day – Mergers and acquisitions, small plan amendments (including multi-employer plans)
 - 30 day – After effective date of M&A amendment affecting only early retirement benefits or retirement type subsidies
 - Excise tax under 4980F as well as accrual pre-condition under 204(h)





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Limits on acceleration of deductions for 401(k)
 - Denied deductibility for certain grace-period contributions -- Rev. Rul. 90-105
 - Applied 90-105 to other pre-funding situations-- Rev. Rul. 2002-46 & Notice 2002-48; modified by Rev. Rul. 2002-73
 - Prohibition on plan language in 401(k) regs.





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- ESOP S Corp. Effective Date Issue -- Rev. Rul. 2003-6
 - EGTRRA tightened S corp. ESOP rules in 409(p)
 - Effective March 14, 2001
 - Exception for existing S corp. ESOPs, to 1/1/05
 - Shell corporations and shell ESOPs being marketed
 - Insubstantial benefits cause invalidity
 - Listed tax shelter requiring disclosures
- Guidance re adjustment of basis in Sub S stock under ESOP (RR 2003-27)





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– Final and Proposed Minimum Distribution 401(a)(9) Regulations

- Final regulations for defined contribution plans
- Proposed regulations for defined benefit plans and annuities paid from DC plans and IRAs
- Concern about impact of DB portion of regulations
- Extension of time for compliance with regulations -- Notice 2003-2 and Rev. Proc. 2003-10
- DB plan amendment postponed to end of EGTRRA remedial amendment period
- Comply until then with 1987 or 2001 or 2002 regulations
- Deemed to satisfy until guidance is issued





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– Proposed 419A(f)(5) Regulations

- Collectively-bargained exception to funded welfare plan rules of 419/419A
- Sham unions being marketed
- Intent to close down practice
- Listed as tax shelter requiring disclosures





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- EPCRS -- Rev. Proc. 2003-44
 - Supersedes Rev. Proc. 2002-47
 - Fixed fee schedule
 - SIMPLE guidance
 - Simplified Group Submission Procedure
 - Relief available for EGTRRA non-amenders
 - Clarifications for correction of spousal consent (QJSA) failures
 - Website helps and new CD-ROM





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– 401(k) and (m) Proposed Regulations

- Consolidation of existing guidance
- Guidance on EGTRRA changes
- Addresses bottom-up leveling
- Eliminates mandatory dis-aggregation for ESOPs





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Catch-up contributions -- Final 414(v) Regs.
 - Universal availability requirement issue
 - Exception for collectively bargained plans
 - No exception for multi-employer plans
 - Prohibition on plan language re accelerated deductions





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Final 457 Regulations
 - Similar to proposed regulations
 - Examination Guidelines
 - Both pre and post EGTRRA law
 - By FY2004





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

– Final 419A(f)(6) Regulations

- 10-or-more employer exception to funded welfare plan rules of 419/419A
- Define “experience rated”
- Few changes from proposed regs
- Listed as tax shelter requiring disclosures





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- ESOP S Corporation management company guidance
 - Management establishes S corporation to provide management services
 - S corporation establishes ESOP and ESOP holds all S corporation shares; management sole beneficiaries
 - S corporation profits flow through to ESOP and escape tax
 - Management takes modest salaries from S corporation, balance in deferred compensation
 - Proposed regulations to shut down practice
 - Rationale: deferred compensation “synthetic equity”
 - Plan to list as tax shelter requiring disclosures





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Proposed regs confirming position re DC plans under 411(d)(6)
- Final regs re retroactive annuity starting dates under 417(a)(7)
- Treatment of compensation for comp limit (RR 2003-11)
- Vesting service and resumption of accruals (RR 2003-65)





Recent Guidance and Current Projects (continued)

➤ Recent Guidance

- Aggregate entry age normal method of funding prohibited (RR 2003-83)
- Relief from excise tax under 4980 (RR 2003-85)
- Statute of limitations for 4971 excise taxes started by filing of 5330, not 5500 (RR 2003-88)
- Mortality tables under 412(d)(7) -- request for comments -- Notice 2003-62





Recent Guidance and Current Projects (continued)

➤ Current Projects

– Proposed 403(b) Regulations

- No regulations since 1960's
- Consolidate guidance and capture learning
- Reflect legislative changes
- Update of Examination Guidelines
 - To reflect EGTRRA changes
 - By FY2004 (hoping . . .)





Recent Guidance and Current Projects (continued)

➤ Current Projects

– 412(i) Guidance

- Insured defined benefit plans meet funding requirements because insured
- Creative promoters market insurance with cash values that spring after distribution of policy following termination of plan
- Prior guidance -- Rev. Rul. 94-75
- Guidance to sort out good from bad practices
- May list as tax shelter requiring disclosures





Recent Guidance and Current Projects (continued)

➤ Current Projects

- Proposed 411(d)(6) DB Exceptions Regulations
 - Notice 2002-46
 - 2001 regulations easing cut-back prohibitions for defined contribution plans
 - Consider doing same for defined benefit plans
 - Received comments from public
 - Proposed regs to be out soon





Rulings & Agreements -- Voluntary Compliance Prog.

- “Stood up” over year ago -- 4 managers, 3 national coordinators, 30 employees across U.S.
- Coordinates closely with exams -- 6 area audit coordinators
- Transfer of cases from technical and other groups to VC
- VC Council; Coordination Committee
- New Rev. Proc. 2003-44





Rulings & Agreements -- Technical Groups in DC

- Re-engineering of Technical
- Rapid Rulings Program pilot project
- Focus group meeting on PLR program
- Internal focus group on technical advice work
- Best practices memo
- Emphasis on customer service





?? Questions ??

- Call: 1-877-829-5500
- Visit: EP Customer Account Services section of the Retirement Plans web page: www.irs.gov/ep for email address -- be sure to leave phone number!

